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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,811	07/09/2003	Masahiko Ogawa	240004US0CONT	8031

22850 7590 05/13/2005

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

ELHILO, EISA B

ART UNIT PAPER NUMBER

1751

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,811

Applicant(s)

OGAWA ET AL.

Examiner

Eisa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/21/2005</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/21/2005 has been entered.

Claim Rejections - 35 USC § 103

2 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massoni (US 6,187,058) in view of Chan et al. (US 5,368,610).

Massoni (US' 058) teaches a method for dyeing hair comprising applying to the hair a dyeing composition comprising from 0.1 to 5.0% of quaternary ammonium salts (see col. 4, lines 35-45), from 2 to 15% of sodium carbonate (see col. 4, lines 25-31), chelating agent of ethylene diamine tetracarboxylic acid in the amount of 0.05% (see col. 3, lines 11-12 and col. 5, Example D2) and oxidizing agent of hydrogen peroxide in the percentage amount of 6% as claimed in claim 4 (see col. 3, lines 3-7 and col. 5 Example D2), wherein the components of the dyeing composition are packed separately and are mixed together in an applicator bottle and then applied to human hair for 30 minutes to produce the color as claimed in claims 5-6 (see col. 5, lines 1-4). The pH

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of the hair dyeing composition has a range of 6 to 12, which is overlapped with the claimed range as claimed in claim 3 (see col. 4, lines 20-22).

Although Massoni (US' 058) teaches a method for dyeing hair comprising applying to the hair a dyeing composition comprising chelating agents, carbonates, ammonia salts and oxidizing agents, the reference does not teach or disclose a water soluble salts of iron as claimed.

Chan et al. (US' 610) in analogous art of hair dyeing formulations, teaches a method for dyeing hair comprising applying to the hair a dyeing composition comprising ferrous sulfate in the amount of 0.025% (see col. 15, Example 10) and the dyed hair was shampooed and rinsed with water (see col. 15, lines 54-55). It is further taught by Chan et al. (US' 610), that the dyeing composition that comprises iron salt provides a darker color on hair compared to the hair treated with a composition that does not contain iron salt (see col. 15, Example 10 and lines 54-60).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to incorporate the ferrous sulfate as a water soluble salt of iron as taught by Chan et al. in the composition that utilized by the method of Massoni (US' 058) with a reasonable expectation of success. Such modification would be obvious because Chan et al. (US' 610) as a secondary reference clearly teaches that the application of the dyeing composition that comprises ferrous sulfate to the hair provides a darker color on hair (see col. 15, Example 10), and, thus, a person of an ordinary skill in the art would be motivated to incorporate the ferrous sulfate as a water soluble salt of iron as taught by Chan et al. in the composition that utilized by the method of Massoni (US' 058) with a reasonable expectation of success for obtaining a dark coloration on hair, and would expect such a method to have similar properties to those claimed, absent unexpected results.

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With respect to the molar ratio, it would have been obvious to one having ordinary skill in the art at the time the invention was made to calculate such a molar ratio by optimizing the amount of the alkalizers in the composition so as to get the maximum effective amount because the reference teaches alkalizing components of carbonate and ammonium compound in the amounts within or overlapped with the claimed amounts, and, thus, a person of ordinary skill in the art would expect that the dyeing composition that applied by such a method would have similar properties to those claimed, absent unexpected results. Further, regarding the temperature of the applied dyeing composition, it would have been obvious to one having ordinary skill in the art to apply the dyeing composition at an ambient temperature and, thus, the person of an ordinary skill in the art would expect that the temperature of the dyeing composition is not critical since the dyeing composition would normally applied to the human hair at an ambient temperature, absent unexpected results.

Conclusion

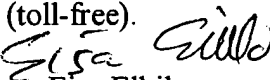
The references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Eisa Elhilo
Patent Examiner
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May 12, 2005